

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect American Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

**REPLY COMMENTS OF BLUEGRASS TELEPHONE COMPANY, INC. D/B/A  
KENTUCKY TELEPHONE AND NORTHERN VALLEY COMMUNICATIONS, LLC  
REGARDING SECTION XV OF THE COMMISSION'S NOTICE OF PROPOSED  
RULEMAKING AND FURTHER NOTICE OF PROPOSED RULEMAKING**

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Bluegrass Telephone Company, Inc. d/b/a Kentucky Telephone (“Kentucky Telephone”) and Northern Valley Communications, LLC (“Northern Valley”), by counsel, hereby provide these reply comments in response to Section XV of the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (“NPRM”) in the above-captioned dockets.

**I. SUMMARY**

Kentucky Telephone and Northern Valley’s<sup>1</sup> examination of the initial comments filed in response to the NPRM confirm that the existing record does not support many of the

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<sup>1</sup> As noted in the initial comments, Kentucky Telephone and Northern Valley share the following characteristics: (1) both are rural CLECs that provide a variety of telecommunications services, including broadband Internet access, in their rural communities; (2) both also provide services to high volume customers, such as those that provide free conference calling to the public; (3) both have voluntarily adopted and tariffed a lower composite rate for traffic terminating to these high volume customers; (4) both have been engaged in protracted litigation with Qwest and Sprint (and, in Kentucky Telephone’s case, Level 3) regarding the payment of access charges for calls terminating to these high volume services, because these IXC’s have

assumptions set forth in the NPRM. For example, the existing record does not establish that “access stimulation” imposes costs on consumers that are not utilizing the free conferencing calling and similar services, or deters the deployment of broadband Internet service. Indeed, the Commission has not established that its proposed regulations are necessary or consistent with the deregulatory, pro-competitive policy framework mandated by Congress.

Nevertheless, to the extent that the Commission adopts new rules, the initial comments support a conclusion that a rural CLEC benchmark that mirrors the rate established for Rate Band 1 local switching in the NECA tariff would be workable and preferable. If the Commission does not adopt this proposal, it should clarify its proposed rules to make clear that: (1) the lower rate for carriers with revenue sharing agreements would apply only to the traffic subject to such an agreement; (2) a carrier meeting the trigger has not made an irrevocable election and may file a new tariff if circumstances change; and (3) the CLEC is entitled to the “full” benchmark rate because it is serving “end users.”

Finally, the comments establish that the Commission should reject its initial conclusion to require tariffs to be filed on 16 day’s notice so as to prevent a carrier from having its tariff “deemed lawful” pursuant to 47 U.S.C. § 204(a)(3) when that carrier complies with the Commission’s rules. And, the Commission should ensure that its final order makes clear that IXC’s must pay tariffed rates and cannot continue using self help and pretextual excuses to refuse to pay LECs.

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engaged in “self help” in direct violation of the applicable tariffs; and (5) both, though doubting that the Commission’s record demonstrates that current rates are unjust or unreasonable, welcomes a resolution of this issue by the Commission, so long as the resolution produces certainty and makes clear that the IXC’s must pay the rates established by the Commission.

## **II. THE INITIAL COMMENTS IN RESPONSE TO THE NPRM DO NOTHING TO SUPPORT THE COMMISSION'S UNSUPPORTED ASSUMPTIONS UNDERLYING THE PROPOSED "ACCESS STIMULATION" RULES**

In the Commission's discussion regarding its intent to adopt new regulations to address "access stimulation," the Commission makes a number of unsupported assertions. Upon review of the initial comments filed in response to the NPRM, it is clear that the Commission should avoid imposing new regulations based on hearsay and innuendo, rather than facts. The Commission can and should seek verifiable data from those that urge the Commission to adopt new rules regarding "access stimulation."

### **A. THE INITIAL COMMENTS DO NOT ESTABLISH FURTHER REGULATION IS NECESSARY**

Events in recent days underscore the need for the Commission to carefully scrutinize the IXCs' claims regarding the "costs" of access stimulation before adopting new regulations. As Rep. Cliff Stearns, R-Fla., chairman of the House Commerce Committee's Oversight and Investigations Subcommittee said recently at a Free State Foundation event, "Attempts to classify . . . new services into outmoded regulations stifles innovation and simply creates uncertainty in the marketplace." See Howard Buskirk, *Stearns Plans Continuing Pressure on FCC to Change Its Ways*, Communications Daily, Apr. 13, 2011 at 1-3. Representative Stearns has called on the Commission to "improve the quality of the FCC's decisions and the country's trust in the FCC." *Id.* In response, the Commission's Chief of Staff, responded that the Commission has taken "real, concrete steps to start lowering the burdens that are imposed on industries." *Id.*

The Commission's history with regard to the issue of free conference calling and similar services is, sadly, a perfect example of how the Commission's decision making process stifles

innovation and creates uncertainty in the marketplace. The NPRM's discussion regarding the need for further regulation with regard to access stimulation does little to remedy that problem. As repeatedly pointed out, in the CLEC Access Charge Orders,<sup>2</sup> the Commission specifically considered whether charging access for calls terminating to conference calling and similar services should be prohibited. The Commission rejected the assertion that this activity should be prohibited by the Commission. And, responding to that clear guidance, LECs agreed to provide service to these free calling services as a mechanism by which to mitigate the reduction in landline subscribership that LECs nationwide are experiencing. These relationships allowed LECs, like Kentucky Telephone and Northern Valley, to expand advanced telecommunication service offerings in their rural communities.

Moreover, despite repeatedly declaring self help to be unlawful, when the IXC's began withholding payments from these LECs, the Commission has been unwilling to enforce the existing rules. Rather, its recent decisions seem to be designed to allow these IXC's to engage in self help withholding with impunity. This sort of behavior, which clearly favors the large dominant carriers over small, competitive companies, discourages competition and fosters uncertainty in the industry. Moreover, it entrenches these dominant players, who use self help withholding as a mechanism to exert economic pressure on those that try to offer innovative and competitive services. Accordingly, the Commission should carefully examine its proposed rules and adjust course in order to hold true to the pro-competitive, deregulatory approach adopted by Congress.

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<sup>2</sup> *In re Access Charge Reform*, CC Docket 96-262, Seventh Report and Order, 16 FCC Rcd. 9923 (2001) and *In re Access Charge Reform*, CC Docket 96-262, Eighth Report and Order, 19 FCC Rcd. 9108 (2004).

**B. THE INITIAL COMMENTS DO NOT SUPPORT THE ASSUMPTION THAT FREE CONFERENCE CALLING IS HARMFUL TO THE GENERAL PUBLIC**

Many of the comments filed in the initial round of comments on the proposed “access stimulation” rules agree with Northern Valley and Kentucky Telephone that the Commission has made assumptions regarding the harmful effects of free conference calling that are simply not supported by the existing record. Others also point out that the analysis provided by the Commission unfairly ignores the manner in which the IXCs’ own decisions have contributed to the current environment.

As Consolidated Communications Holdings, Inc. observed:

The Commission’s statements that ‘the significant costs of these arbitrage arrangements are in fact borne by the entire system as long distance carriers that are required to pay these access charges must recover these funds from their customers,’ NPRM, ¶ 636, and ‘[c]ustomers initiating calls to access stimulating entities are generally unaware that their calls are part of an access stimulation arrangement and that very high access charges are being assessed on the IXC,’ are explained at least in part by IXCs’ own business decisions to offer their end users unlimited calling at a fixed monthly price. The Commission fails to acknowledge the role of the all-you-can-eat calling plan in creating the conditions for the access stimulation activities it address.

*In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of Consolidated Communications Holdings, Inc. on Arbitrage Issues Raised in Section XV of the NPRM, at 13 (filed Apr. 1, 2011).

The Coalition for Rational Universal Service and Intercarrier Reform made these cogent observations:

We take specific exception to the assertion [at 637] that access stimulation takes resources away from ‘more productive uses such as broadband deployment, and harms competition.’ Access charges are paid by long-distance carriers, and in turn by callers. Broadband deployment is an entirely different industry, far more capital-intensive, and largely involves different participants.

Furthermore, access stimulation is not anticompetitive, as it in fact provides some small carriers with incremental revenue that enables them to compete with larger ones.

‘Free’ Conference calling services have become a vital tool for many users, who use it to collaborate on projects and hold virtual meetings. These services are able to operate on revenues well under one cent per caller-minute, a small fraction of the price charged by paid-use conference bridge operators...The transaction costs alone of a paid conference eservices can be much higher than the total cost of free services.

If free conference services were banned, then the bulk of the traffic would almost certainly move to the Internet, using free Internet voice (*not* interconnected VoIP) services such as Skype conferencing...these services provide an incentive for customers to purchase flat-rate long distances PSTN usage plans, whose retail profit margin is usually quite high, even with some amount of stimulated usage.”

*In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of the Coalition for Rational Universal Service and Intercarrier Reform, at 6-7 (filed Apr. 1, 2011).

Moreover, those IXC's that weighed in on the proposed rules, have offered no new *facts* to support the Commission's desire to impose an extra layer of regulation. As Northern Valley and Kentucky Telephone have already pointed out, many of the assertions in the Commission's discussion are adopted from the advocacy of the IXC's, making them “double hearsay,” because all of these statements are asserted without any evidence of the “facts” that are being claimed. Now, unsurprisingly, the IXC's have simply parroted what the Commission wrote in the NPRM, asserting again that these apparent “harms” have been established as fact, when, in reality, all that we have is yet another layer of hearsay. *See, e.g., In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of CenturyLink, at 27 (filed Apr. 1, 2011) (“In fact, as observed in the NPRM, traffic pumping threatens to take an

estimated \$2.3 billion from IXC's and American consumers for traffic processed between 2005 and 2010, and the problem continues.”) (footnotes omitted).

By way of further example, Verizon and Verizon Wireless assert that “[t]he traffic pumping problem continues to grow and has cost consumers and the industry more than \$2 billion over the last five years, approximately \$400 million per year.” *In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of Verizon and Verizon Wireless, at 35 (filed Apr. 1, 2011) (footnotes omitted). To make this assertion, Verizon relies on a faulty study that apparently fails to take into consideration in any manner whatsoever the revenues that are generated by consumers that call into conference calling and similar services. Moreover, the study does not define the limits of its definition of “traffic pumping,” does not indicate whether the estimate is based on amounts actually *billed* to the IXC's, amounts actually *paid* by the IXC's, or by some other methodology.

Similarly, Leap Wireless reports that it “recently commissioned a report to analyze the scope and costs of traffic pumping on its network. The report determined that, for Leap’s June 2010 billing cycle, traffic pumping represented an estimated 16 percent of total domestic ICC charges for the month.” *In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of Leap Wireless International, Inc. & Cricket Commc’ns, Inc., at 5 (filed Apr. 1, 2011). Despite these representations, Leap has not seen fit to file this report in the docket or otherwise make the underlying data available for examination. As such, it is but the latest example of carriers offering their self-serving conclusions, rather than data.

Comcast makes similar unsubstantiated assertions regarding the “costs” of access stimulation. *In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC

Docket No. 07-135 et. al, Comments of Comcast Corp., at 10 (filed Apr. 1, 2011) (“This problem, which costs providers – and, indirectly, their customers – hundreds of millions of dollars each year, plainly is attributable to the obsolete interstate and intrastate intercarrier compensation regime.”).

In short, Northern Valley and Kentucky Telephone agree with Free Conferencing that the repeated failure by the IXCs “...to offer independently confirmed data into the record such as the additional revenues they receive from calls resulting from ‘access stimulation’ warrants an inference that the data would be unfavorable to their thesis.” *In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of Free Conferencing Corp., at 18 (filed Apr. 1, 2011) (internal citation omitted).

### **III. FURTHER DISCUSSION REGARDING THE COMMISSION’S PROPOSED RULES AS THEY APPLY TO CLECS**

#### **A. THE ALTERNATIVE BENCHMARK PROPOSED BY NORTHERN VALLEY AND KENTUCKY TELEPHONE WOULD ELIMINATE THE CONCERNS RAISED BY THE IXCS**

Northern Valley and Kentucky Telephone have proposed utilizing the NECA Rate Band 1 local switching element as a benchmark for CLECs that meet a trigger adopted by the Commission. As explained in the opening comments, this benchmark would have the distinct advantage of being clear, unambiguous, and uniform. The initial comments support the conclusion that this trigger would appropriately resolve the concerns of the Commission and the IXCs regarding the rates that are assessed for calls terminating to conference calling services providers.

One important advantage of this benchmark is that it would not unfairly advantage certain carriers over because of the state they happen to do business in. It would also eliminate any concerns about how far the traffic is transported before it is terminated to the high volume

customers. *See, e.g., In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of AT&T Inc., at 30 (filed Apr. 1, 2011) (“One serious and growing problem that requires the Commission’s immediate attention is ‘mileage pumping.’”) (internal citations omitted). By implementing a benchmark that is clear and uniform throughout the industry, the Commission would reduce the likelihood of continued litigation, while also meeting its stated objective of having the rates aligned with those carriers that have higher volumes of traffic.

**B. THE COMMENTS DO NOT PROVIDE A PRINCIPLED BASIS TO DISTINGUISH BETWEEN DIFFERENT TYPES OF REVENUE SHARING**

As Northern Valley and Kentucky Telephone observed in their opening comments, “revenue sharing is revenue sharing.” *See, e.g., In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of Bluegrass Telephone Company, Inc. d/b/a Kentucky Telephone and Northern Valley Communications, LLC Regarding Section XV of the Commission’s Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, at 17 (filed Apr. 1, 2011). Many commenters agree with this position, others have pointed the importance of revenue sharing to telecommunications carriers generally, and still others have urged the Commission to preserve certain types of revenue sharing as completely unregulated.

For example, Cablevision Systems Corporation and Charter Communications “urge[ ] the Commission to clarify that not all revenue-sharing arrangements are improper.” *In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of Cablevision Sys. Corp. & Charter Commc’ns, at 13 (filed Apr. 1, 2011). The Coalition for Rational Universal Service and Intercarrier Reform point out that “Access stimulation *per se* is not, however, necessarily a bad thing: sharing revenue with a service

provider may well be the most economically efficient and consumer-friendly way of providing low-cost enhanced services, such as conference calling.” *In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of the Coalition for Rational Universal Service and Intercarrier Reform, at 6-7 (filed Apr. 1, 2011).

Other commenters also agreed that revenue sharing is a valuable tool that promotes competition in the telecommunications marketplace. *See, e.g., In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of EarthLink Inc., at 13 (filed Apr. 1, 2011) (“EarthLink disagrees, however, that revenue sharing is an accurate indicator of arbitrage. The commission should not adopt any intercarrier compensation rate reductions based in whole or in part on the fact that a carrier chooses to forgo a portion of its profit to incent customers to move traffic onto that carrier’s network.”). And, the Small Company Committee of the Louisiana Telecommunications Association argued that sharing revenues with end user customers helps promote economic development in rural communities. *See In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of the Small Company Committee of the Louisiana Telecommunications Association, at 15 (filed Apr. 1, 2011) (“For example, if a call center locates in a rural area – a key economic development (and incentive for broadband deployment) in areas often lacking in substantial new job growth – the carrier serving such a call center should not be penalized.”) (footnotes omitted).

In light of the comments, it is all the more incumbent upon the Commission to undertake a thorough and even-handed inquiry of the purported problems before adopting any new rules. The Commission must finally challenge the unsupported accusations that have been the hallmark of the “access stimulation” docket.

**C. THE COMMISSION SHOULD CLARIFY HOW THE PROPOSED NEW BENCHMARK FOR CLECS WOULD WORK**

The initial comments also support Northern Valley and Kentucky Telephone's request for clarification on a number of key issues. As discussed in the opening comments, to the extent the Commission adopts a revenue sharing trigger, the Commission should clarify that the proposed CLEC benchmark applies only to the traffic that is subject to an access revenue sharing agreement. Second, the Commission should make clear that if a CLEC's circumstances change over time and it no longer meets whatever trigger the Commission may ultimately adopt, that CLEC may file a further revised tariff removing the lower rates. This clarification is important to ensure that rates remain just and reasonable as circumstances change over time. Finally, to the extent that the Commission adopts its current proposed rules requiring CLECs to mirror the RBOC/ILEC rate, the Commission should clarify that the CLEC is entitled to the "full" benchmark rate because it is providing service to end users.

The initial comments filed in response to the NPRM demonstrate the particular need for the Commission to clarify the manner in which it intends to have its proposed benchmark implemented. As Northern Valley and Kentucky Telephone pointed out, Qwest and Sprint have taken the illogical position that conference calling providers can *never* be end users. For example, Sprint argued in its initial comments that "pumped traffic associated with purportedly 'free' conference/chat, etc. services is not access traffic and that the terminating LEC (or any intermediary LEC on the terminating side) may therefore not assess access charges on such traffic" and that "... 'free' service providers...are *not* end user customers of the terminating LEC pursuant to the LEC's tariff." *In re Establishing Just and Reasonable Rates for Local Exchange*

*Carriers*, WC Docket No. 07-135, Comments of Sprint Nextel Corp., at 9 (filed Apr. 1, 2011) (emphasis in original).<sup>3</sup>

Unless the Commission debunks this erroneous interpretation of its previous orders, these carriers are likely to continue making this argument, and using it as an excuse to withhold payment, even after the Commission issues its order in this proceeding. Accordingly, the Commission should address this issue head on in an effort to mitigate the risk that further litigation will ensue following implementation of new rules.

#### **IV. THE INITIAL COMMENTS ESTABLISH THAT THE COMMISSION SHOULD REJECT ITS PLAN TO DENY “DEEMED LAWFUL” STATUS TO LECS THAT COMPLY WITH THE MODIFIED RULES**

As Northern Valley and Kentucky Telephone discussed in their initial comments, the Commission’s proposed rules seem to be designed to punish those carriers that engage in revenue sharing, by seeking to strip those carriers of the ability to have their tariffs deemed lawful by operation of 47 U.S.C. § 204(a)(3). Many commenters share the view that the proposed rules would be unlawful in violation of the Communications Act. Conversely, those carriers that support this proposal do so without offering *any* legal analysis to support their position (and many other are silent about the proposal, likely because they recognize that it is inconsistent with applicable law). *See, e.g., In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of CenturyLink, at 51 (filed Apr. 1, 2011) (“...the NPRM proposes to require that tariff filings made in order to reflect traffic pumping (that is, reducing rates to take account of the increased volumes caused through traffic pumping) be filed on 16 days notice, depriving them of ‘deemed lawful’ status under Section

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<sup>3</sup> *See also id.* at 11 (arguing, **likely in violation of the Commission’s *ex parte* rules**, that Northern Valley’s new tariff, including its high volume access rate, which is the subject of a 208 formal complaint filed by Sprint, “are unlawful *ab initio*, and Sprint is confident that challenges brought against these tariffs will be upheld.”).

204(a)(3) of the Act. While CenturyLink has no problem with this concept, it is shooting at the wrong target.”); Comments of AT&T, at 20; Comments of Level 3, at 4 (“Level 3 also urges the Commission to adopt the NPRM’s proposal to require that those access sharing CLECs’ tariffs be filed on 16 days notice.”). That no carrier even attempted to offer legal support for the Commission’s proposal is quite telling.

The Independent Telephone and Telecommunications Alliance on Inter-carrier Compensation Arbitrage Issues correctly observed that, “[t]he Commission’s proposal to ‘forbear’ from the deemed lawful provisions of Section 204(a)(3) as a general matter is inconsistent with Congressional directives and departs from historic Commission policies that have assured operational certainty for carriers.” *In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of the Independent Telephone and Telecommunications Alliance on Inter-carrier Compensation Arbitrage Issues, at 25 (filed Apr. 1, 2011). Omnitel and Tekstar agreed that “[t]here is no reason to deny a carrier the Congressionally conferred benefits of the deemed lawful status of its tariff if it conforms to the Commission’s rules and files a tariff containing rates sanctioned by the rules.” *In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of Omnitel Commc’ns, Inc. & Tekstar Commc’ns, Inc., at 19 (filed Apr. 1, 2011); *see also In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of Paetec Holding Corp., MPower Comm’cns Corp. & U.S. Telepacific Corp., & RCN Telecom Servs., LLC, at 24-25 (filed Apr. 1, 2011) (“The FCC should revise its deemed lawful proposal so that the refunds can be required when the LEC meets the trigger but fails to comply with the rules requiring lower rates. Prohibiting a LEC that complies with the rule from filing under section 204(a)(3) is punitive and contradicts the FCC’s finding

that price cap rates are generally much lower and not subject to access stimulation complaints.”)  
(footnotes omitted).

Other carriers also seem to agree that, to the extent that Commission has any lawful authority to deny a carrier deemed lawful status (which Kentucky Telephone and Northern Valley do not concede), such authority would be limited to a situation in which a carrier fails to comply with the Commission’s rules. *In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of XO Commc’ns, LLC, at 46 (filed Apr. 1, 2011) (“XO proposes that the Commission adopt a rebuttable presumption that increases in access volumes of more than 100 percent in a six month time period would automatically revoke, for the period contemporaneous with and following the increase, the ‘deemed lawful’ status of a LEC whose interstate tariffed rates are above those of the BOC or largest ILEC in the state until reviewed by the Commission.”).

Moreover, many commenters urged the Commission to preserve deemed lawful status for those with tariffs on file that already meet any new benchmark that the Commission may adopt by confirming that these carriers do not have to file new tariffs. *See, e.g., In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of Hypercube Telecom, LLC, at 11 (filed Apr. 1, 2011). While Northern Valley and Kentucky Telephone do not disagree that these carriers should not be required to file new tariffs, there does not appear to be a reasonable basis to provide these carriers with the protections of “deemed lawful” status, while denying that to those who ensure their tariffs conform to the new rules once they are adopted. The Commission should ensure that all carriers who comply with the Commission’s rules and file in accordance with section 204(a)(3) of the Act are able to obtain the protections afforded to them by the plain language used by Congress.

**V. THE INITIAL COMMENTS ESTABLISH THAT THE COMMISSION SHOULD ACT TO END IXC SELF HELP**

In addition to protecting deemed lawful protection for complying carriers, many commenters echoed Northern Valley and Kentucky Telephone's request for the Commission to take action to ensure that IXCs are once again required to pay for the services they receive when the rates comply with the Commission's rules and to curb the IXCs' practice of self help.

As NECA observes, "...RLECs have experienced substantial difficulties collecting bills for access service, as interconnecting carriers pursue 'self help' remedies to avoid paying charges." *In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of the National Exchange Carrier Association et al., at 36 (filed Apr. 1, 2011). "More recently, interconnecting carriers refuse to pay access bills – even plainly legitimate bills – based on assertions the LEC is engaged in traffic pumping arrangements." *Id.* And, the joint comments of Paetec, MPower, U.S. Telepacific, and & RCN Telecom, call out IXC self help for what it is, an arbitrage scheme (which, it must be stressed, harms competition and diverts resources from broadband deployment). *See, In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 et. al, Comments of Paetec Holding Corp., MPower Comm'cns Corp. & U.S. Telepacific Corp., & RCN Telecom Servs., LLC, at 14 (filed Apr. 1, 2011). And, as these comments correctly point out, "the CEOs of Qwest, CenturyLink, Frontier, and Windstream [have] requested that the Commission enforce existing switched access rules." *Id.* at 17. Enforcing those existing rules – including those that prohibit self help and require an IXC to pay for the services that they receive – is exactly what Northern Valley, Kentucky Telephone, and other LECs have repeatedly requested.

Now, once again, Northern Valley and Kentucky Telephone respectfully urge the Commission to take action in this docket with an eye towards curbing the expensive and time-consuming litigation that has been a constant reality for many carriers for the past four years. The Commission can do this only if it takes an even handed approach that seeks to ensure that carriers that follow the Commission's guidance and rules get paid for the work that they do. Expressly reaffirming that IXC self help is an unjust and unreasonable practice in violation of section 201(b) of the Act is the best way to achieve this end.

## **VI. CONCLUSION**

The Commission should act to bring certainty to the industry and thereby promote, rather than impede, innovation. The need for new regulation, as compared to enforcing the existing regulatory obligations, is doubtful. However, to the extent that the Commission moves ahead, it should be sure that its rules result in LECs once again being paid for the services that they provide, rather than taking action that allows the IXCs to continue inventing new reasons not to pay. Importantly, the Commission should avoid adopting any rules that would deny carriers "deemed lawful" status.

Dated: April 18, 2011

Respectfully submitted,



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